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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/644,984	08/24/2000	Tatjana Piljac	196502US23 CONT	2601

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EXAMINER

MAIER, LEIGH C

ART UNIT	PAPER NUMBER
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1623

DATE MAILED: 10/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/644,984	<b>Applicant(s)</b> PILJAC ET AL.	
	<b>Examiner</b> Leigh C. Maier	<b>Art Unit</b> 1623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 26-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Status of the Claims***

Claims 1-25 are canceled. Claim 26 has been amended. Claims 26-28 are pending. Any rejection or objection not expressly repeated has been withdrawn. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 102***

Claims 26-28 are again rejected under 35 U.S.C. 102(b) as being anticipated by Piljac et al (US 5,455,232) or Piljac et al (US 5,466,675), as set forth in the previous Office action.

Piljac '232 discloses the application of a composition comprising a rhamnolipid of Formula I. See "Formulation Example" bridging col 4-5. The reference is silent regarding the treatment of "signs of aging." However, the patients treated are not identified as infants and in the absence of evidence to the contrary are assumed to be patients above the age of consent. Inasmuch as the skin of any non-infant human would have some sort of "sign of aging," (e.g. dryness, roughness, freckling, pigmentation, sun damage, wrinkling, etc.) the topical application of the rhamnolipid inherently accomplishes this method.

Piljac '675 also discloses the application of a composition comprising a rhamnolipid of Formula I to the skin of patients. See Clinical Results at col 27. These patients are identified as "men and women," so, not being infants, would also necessarily have skin with "signs of aging," as discussed above.

By applying the rhamnolipids of the claims to adult skin, the method is accomplished and the claims are anticipated.

Applicant's arguments filed July 11, 2006 have been fully considered but they are not persuasive.

Applicant first contends that a young adult in prime physical condition or not yet grown would not appropriately be assumed to show signs of aging and apparently does not agree that aging causes signs of aging. Applicant further objects to the inclusion of freckling and pigmentation because this is "sun damage" and not necessarily related to age and to dryness and roughness because this may be caused by general wear and tear. Therefore, it appears that Applicant's position that aging does not cause signs of aging; sun exposure does not cause signs of aging; and general wear and tear does not cause signs of aging.

Applicant further argues that one must look to the specification for a definition of "signs of aging." Looking to the specification, the sum total of guidance with respect to such a definition is the passage cited by Applicant and a similar passage at page 3. The specification discloses treatment of "signs of aging, *such as* wrinkles." (emphasis added)

Claims are to be given their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim are not read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003) (claims must be interpreted "in view of the specification" without importing limitations from the specification into the claims unnecessarily). *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969). However, the examiner does not find a definition of "signs of

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aging” in the specification that would preclude conditions that would be considered “signs of aging” by one of ordinary skill. See, for example, Yu et al (US 5,547,988) at col 1, lines 21-28 and col 2, lines 45-60.

Applicant further notes that Piljac ‘232 and Piljac ‘675 describe the treatment of dermatological diseases and autoimmune diseases, respectively. The examiner agrees but maintains that in applying the compounds to skin, as disclosed in the art, the method has been accomplished even if this effect is not recognized at the time. The burden is on Applicant to demonstrate that the procedures disclosed in the art did not result in re-epithelization.

Claims 26 and 28 are again rejected under 35 U.S.C. 102(b) as being anticipated by Ishigami et al (US 4,902,512), as set forth in the previous Office action.

Ishigami discloses the application of a composition comprising a rhamnolipid of Formula I to the skin of women. See rhamnolipid structures at col 2 and col 3, lines 30-64. By applying the rhamnolipids of the claims to adult skin, the method is accomplished and the claims are anticipated, as discussed above.

Applicant’s arguments filed July 11, 2006 have been fully considered but they are not persuasive.

Applicant first argues that the reasoning set forth above is based on hindsight. The examiner fails to see how hindsight would be involved. One of ordinary skill, following the directions set forth in the reference would inherently accomplish the method. There is no need to recognize any re-epithelization effect.

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Applicant further contends that “[i]t is not evident that liposomes constructed of rhamnolipids would have the same effect.” The examiner maintains that the disclosed method appears to meet the limitations of the claims, and the burden is on Applicant to demonstrate that this form is not effective for accomplishing the instant method.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

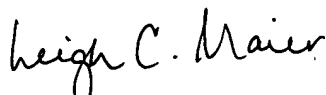
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*Examiner's hours, phone & fax numbers*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh Maier whose telephone number is (571) 272-0656. The examiner can normally be reached on Tuesday, Thursday, and Friday 7:00 to 3:30 (ET).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Anna Jiang (571) 272-0627, may be contacted. The fax number for Group 1600, Art Unit 1623 is (571) 273-8300.

Visit the U.S. PTO's site on the World Wide Web at <http://www.uspto.gov>. This site contains lots of valuable information including the latest PTO fees, downloadable forms, basic search capabilities and much more. Information regarding the status of an application may be obtained from the Patent Application Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished application is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197.



Leigh C. Maier  
Primary Examiner  
September 26, 2006